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# State of Utah v. Raymond Strohm : Brief of Respondent

Utah Supreme Court

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# In The Supreme Court of the State of Utah

STATE OF UTAH,

Plaintiff-Respondent,

vs.

RAYMOND STROHM,

Defendant-Appellant.

Appeal from jury verdict of guilty  
Court in and for Salt Lake County,  
Faux, Presiding.

## BRIEF OF RESPONDENT

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# In The Supreme Court of the State of Utah

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STATE OF UTAH,

Plaintiff-Respondent,

vs.

RAYMOND STROHM,

Defendant-Appellant.

} Case No.  
11166

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## BRIEF OF RESPONDENT

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### STATEMENT OF NATURE OF CASE

The appellant, Raymond Strohm, appeals from conviction of the crimes of burglary in the third degree and grand larceny in the Third Judicial District Court, Salt Lake County, State of Utah, the Honorable Merrill C. Faux presiding.

### DISPOSITION IN LOWER COURT

The jury found defendant guilty of burglary in the third degree and grand larceny. He was sentenced in the Utah State Prison for the indeterminate term as provided by law.

### RELIEF SOUGHT ON APPEAL

The respondent submits that the judgment of the Third District Court should be affirmed.

### STATEMENT OF FACTS

The appellant was convicted of burglary in the third de-

gree and grand larceny after trial by jury. The victim of the offense was Delivery Service and Transfer Company of Salt Lake City, Utah (T. 3).

During the trial, Nick Palukos, investigating officer with the Salt Lake City Police Department, testified that he interviewed the defendant on July 13 or 14 in the interrogation room at the Salt Lake County Jail (T. 21), where defendant was being held on another charge (T. 20). Defendant was given a Miranda warning (T. 19), and defendant specifically stated that he understood his rights and what the officer had told him before entering into conversation (T. 21). Before Officer Palukos was allowed to testify about the conversation he had had with defendant, defense counsel requested and was given permission to voir dire the witness. Testimony on voir dire revealed that (1) the conversation took place on July 13 or 14 in the city jail where defendant was being held on another charge, (2) the defendant had indicated that he understood his rights and had stated that he understood what the officer told him before going into conversation (T. 21), (3) that during the interrogation he did not request counsel and (4) that at the time of the interrogation defendant was ill. The officer gave an opinion that defendant was suffering from narcotics withdrawal but that he appeared to be able to concentrate fully on what was proceeding (T. 22).

After concluding voir dire examination, defense counsel objected to any further testimony concerning the conversation on the ground that defendant was undergoing narcotics withdrawal and that questioning under such circumstances would amount to implied volition and implied coercion (T-22). Counsel for the State replied to the objection stating that he

thought the reason for the Miranda warning was to guard against the defendant being forced into or tricked into a confession but that if through his own physical condition which he himself created and not through intimidation or from some external force, he places himself in a position where he confesses, the rules of fairplay are not violated and such an objection could not be used to keep an admission out of evidence (T. 22).

After hearing direct testimony, voir dire testimony and the arguments of counsel concerning the nature of the confession, the court ruled that the defendant had been warned under the Miranda decision and was given the opportunity to ask for counsel (T. 23). The court then allowed the state to present further testimony pertaining to the conversation between defendant and Officer Palukos. The officer testified that during the ten minute interrogation, defendant "mentioned that he, along with two other individuals, had gone to this building, that he had stayed in the car while the other two individuals entered the building; and they returned with the property, placed it in the car, and they left the scene" (T. 23). Officer Palukos further testified that defendant stated he sold the property to an undercover agent for the sheriff's department (T. 33).

On cross-examination, the officer stated that defendant, during the interrogation, was clear-thinking but was shaking and that when asked how he felt, defendant replied that he was okay, that he was all right (T. 24). The interrogation was discontinued after ten minutes of questioning. The officer stated to the defendant that he would return when defendant felt better.

During the trial, Officer John Harvey Van Katwyk, deputy for the Salt Lake County Sheriff's Office, testified that he was engaged in undercover work involving defendant (T. 26), that he purchased the typewriter introduced into evidence as the stolen typewriter from defendant at the same time that he purchased a stamp machine (T. 29).

During the trial, Lieutenant Paul LaBounty of the Salt Lake County Sheriff's Office testified that at the time the defendant was booked into the Salt Lake County Jail, defendant stated, "Lieutenant (meaning Officer LaBounty), you better check into your boys buying hot typewriters." (T. 36). Further testimony indicated the hot typewriter alluded to was the one purchased by Officer Van Katwyk. (T. 36).

During the trial, the appellant-defendant took the stand in his own behalf and recalled having a conversation with Officer Palukos in jail but could not recall any specific conversation regarding the burglary. He indicated that he had been on narcotics for a period of two weeks prior to the time of arrest, was sick, and could not remember exactly what happened. He further testified that Officer Palukos had the admission or the confession as to the burglary mixed up with other incidents under investigation (T-47). Defendant testified that the stolen items in question had been brought to him by Mike Martinez and Ernie Gallegos, who had asked him to sell the typewriter (T. 49).

## ARGUMENT

### POINT I

THE TRIAL COURT CORRECTLY RULED ON THE ADMISSIBILITY AND VOLUNTARINESS OF THE AP-

## PELLANT'S ADMISSION OR CONFESSION BEFORE ALLOWING THE SAME TO BE HEARD BY THE JURY.

Appellant's appeal is based on the allegation that the trial court committed prejudicial error in ruling that the question of the voluntariness of the confession or admission is one for the jury. The appellant further alleges that the trial court violated defendant's right to due process and procedure of rules set down by this court.

A review of the record will show that the confession or admission of defendant was heard by the jury only after the judge had ruled as to its admissibility. Rather than have a separate hearing as to admissibility of the confession or admission out of the presence of the jury, defense counsel chose to voir dire Officer Palukos and object to introduction of any conversation the officer had with defendant. The voir dire examination included testimony as to the time of the conversation, the place of the conversation, the preliminary Miranda warning and statements to the defendant. Defense counsel made objection to the introduction of further conversation and both sides were given the opportunity to argue the law involved before the judge made his ruling. Counsel for the State's last sentence before the court ruled was "I don't think this could be used to keep this kind of statement out." (T. 23). "This" referred to the argument by defense counsel that narcotics withdrawal made defendant's statements involuntary and coercive. The court's full reply was "Well, the court will rule that, as to the warning under the Miranda decision, it appears he was warned, given an opportunity to ask for counsel. As to whether or not what he said was voluntary is a question for the jury. Under the circumstances that this has developed here, whether voluntary or coerced, would be a matter for the jury to deter-



mine.” (T. 23). The “circumstances” the judge alludes to are the events of the record which reveal that defendant was allowed to voir dire the State’s witness, put evidence before the court as to the nature of the conversation and argue the legal aspects of the matter before a trial judge. It was after these “circumstances” that the judge ruled and allowed the State to proceed with the conversation between the officer and the defendant. It is obvious that the Judge ruled on the very question of involuntariness and coercion in that he admitted the conversation into evidence for the consideration of the jury only after the defendant had had the opportunity to object to its entry into evidence. Prior to the time of this ruling, the substance of a confession or admission was not before the jury. The only testimony the jury had heard prior to the ruling was whether or not the narcotics withdrawal was sufficient to keep the officer from testifying about the conversation with defendant.

After making the ruling prior to having the confession or admission heard by the jury, the judge then properly stated that the question of voluntariness and coercion was one that the jury must determine.

*State v. Crank*, 105 Utah 332, 142 P.2d 178 (1943) sets forth procedures and guidelines to be followed by the trial court in determining the voluntariness of a confession or admission of a criminal defendant before submitting the question to a jury. The court stated:

“When the state seeks to put the confession before the jury, it must establish its competency to the court. To do this it must be shown that the confession was given by the accused as his voluntary act; as an expression of his independent and free will, uninflu-

enced by fear or punishment or by hope of reward; that it was not induced or influenced by any advantages or benefits that might accrue to him or those near or dear to him, nor was it given to lighten any penalties or punishments that the law might impose upon him if tried and convicted without confessing; that it was not given as a desire to escape or avoid any misery, threats, or conduct of any other person, having it in their power, or whom he believed had it in their power, to inflict upon him, or upon whom it was his duty or privilege to protect. This is a basic and constitutionally guaranteed right of the accused."

It is clear in the record that this basic and constitutionally guaranteed right of the accused was safeguarded and that the court heard evidence on the points listed above.

The appellant would have the court believe that the actual procedure followed in *State v. Crank* must be followed in all cases. The importance in *State v. Crank* is that it sets up the basic and constitutionally guaranteed rights of the accused, along with guidelines for safeguarding those rights. In *State v. Louden*, 15 Utah 2d 64, 387 P.2d 240 (1963), this court discussed the question of what procedure was to be followed in determining voluntariness of a confession. The court stated:

"There is no statutory mandate as to the procedure to be followed. Nor should there be any rigid and inviolable one. The duty which evolves in the trial court is to adopt and follow some procedure which will guard against admission of spurious confessions or admissions. This had been varied somewhat depending on the circumstances of each case and the court should have considerable latitude of discretion as how to protect the rights of the defendants in that

regard. If that purpose is served, the fact that the course adopted may vary from some other procedure which may have also been deemed permissible, should not result in the reversal of the conviction."

Further elaborating the court states:

"It must be borne in mind, the court has not only the duty mentioned to the defendant, must also safeguard the rights of the state. Furthermore, it has the responsibility of seeing that the trial **moves forward in** an orderly manner and with such reasonable expedition as can be achieved consistent with looking after the interests of both sides of the controversy. It would be quite impractical to halt the main trial, excuse the jury, and conduct a collateral trial on the question of voluntariness of an admission or a confession every time a defendant's counsel might make an objection. While this has indeed been approved as proper procedure under circumstances which require it, it should be done only when there is presented such genuine and substantial issue as to voluntariness that in the court's judgment there is some real possibility that permitting the jury to hear the evidence would so prejudice their minds that the defendant would not have a fair trial."

*State v. Ashdown*, 5 Utah 2d 59, 296 P.2d 726 (1956)  
states:

"Although the burden of proof as to the voluntariness of the confession lies with the party seeking to use it as evidence, i.e., the prosecution, after the trial court has decided from the evidence that the confession was voluntarily made, the appellate court will not disturb that finding in the absence of a showing of abuse of its discretion when there is no substantial evidence from which it could reasonably so find. It is clear from the record that the trial court did have

evidence before it from which it could make a ruling that the confession was voluntarily made.”

It is submitted that the trial court committed no prejudicial error, nor violated any constitutionally guaranteed right of the accused or abused its discretion. The judge was given sufficient evidence through direct examination, voir dire examination and arguments of counsel of which to base a ruling that the defendant received sufficient warning under the Miranda decision and had had an opportunity to ask for counsel and that the fact that defendant was ill from narcotics withdrawal was not sufficient to keep the confession from the jury. After so ruling, the question then was one that was properly for the jury to determine and to give weight to the question of voluntariness or coercion. This procedure adopted by the trial court would meet the requirements of the orthodox rule followed in Utah that the trial judge is to hear the evidence and rule for the purpose of admissibility of a confession and that the jury is to consider voluntariness as it affects weight or credibility of the confession as set forth in *State v. Mares*, 113 Utah 225, 192 P.2d 861 (1948); *State v. Brosch*, 119 Utah 450, 229 P.2d 289 (1951); *State v. Ashdown*, 5 Utah 2d 59, 296 P.2d 726 (1956); *State v. Crank*, 105 Utah 332, 142 P.2d 178 (1943); *State v. Loudon*, 15 Utah 2d 64, 387 P.2d 240 (1963).

In the present case, we are not faced with the situation where the defendant has been tortured or subjected to long periods of questioning. On the contrary, the defendant made the confession or admission during a ten minute interrogation for a crime other than the one for which he had been charged and was in custody. His statements to the officer were that he knew what he was doing, that he understood his rights and that

he felt all right. These statements brought out in voir dire testimony indicate a voluntary confession and is the type of evidence which the trial judge can take into consideration in determining the voluntariness for the purpose of admissibility of the confession. *State v. Louden, supra*, indicates that there are many procedures that can be followed by the trial court in admitting an admission or confession into evidence. In the present case, it was defense counsel who chose to voir dire and argue the point in the presence of the jury rather than ask for a separate hearing. Defendant was given an opportunity to present his side of the case during the trial.

Appellant's brief contains a discussion on United States Supreme Court case of *Jackson v. Denno*, 378 U.S. 368, 84 Sup.Ct. 1774, 12 L.Ed.2d 908 (1964), which the United States Supreme Court set down constitutional guidelines for the procedure relative to determining voluntariness of the confession. The court held that the New York procedure for determining voluntariness of a confession offered by the prosecution violated the due process clause of the Fourteenth Amendment. It should be pointed out that the procedure used by the New York court, commonly called the "New York Rule" is different from the procedure used for many years by the Utah courts commonly called the "Wigmore" rule or the "Orthodox" rule. It is submitted that the procedures long in use in this State are in conformity with *Jackson v. Denno, supra*.

## CONCLUSION

It is respectfully submitted that the trial court did rule on the admissibility of the confession or admission before giving it to the jury. It is also evident from the record that the judge had sufficient evidence before him on which to make

his ruling. It is submitted that the porcedure used by the trial court to assemble the evidence necessary on which to make a ruling was entirely within his discretion and within the guidelines as set out in *State v. Loudon*, and other cases cited. It should be stated that the petitioner has the burden of persuading the trial court by a preponderance of evidence acts which will entitle him to relief. When the trial judge has made findings of fact and a judgment thereon, they are entitled to the presumption of correctness. On appeal, the evidence is surveyed in the light favorable to them, and if there is any reasonable basis in the evidence to support them, they will not be overturned.

It is respectfully submitted that there has been no violation of defendant's rights and no prejudicial errors committed by the trial court.

Respectfully submitted,

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